



Committee on Criminal Justice Appropriations

Wednesday, March 22, 2006
4:15 pm – 5:45 pm
214 Capitol

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time: Wednesday, March 22, 2006 04:15 pm

End Date and Time: Wednesday, March 22, 2006 05:45 pm

Location: 214 Capitol

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 283 Correctional Probation Officers by Kreegel

HB 25 Violent Felony Offenders by Negron

Budget workshop

NOTICE FINALIZED on 03/20/2006 16:14 by KAG



Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
WEDNESDAY, MARCH 22, 2006
4:15pm - 5:45pm
214 Capitol

- I. Roll Call and opening comments by Chair Barreiro**
- II. Consideration of the following bills:**
 - **HB 25**
 - **HB 283**
- III. Budget workshop**
- IV. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 25 Violent Felony Offenders
SPONSOR(S): Negron and others
TIED BILLS: IDEN./SIM. BILLS: SB 2622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u>DeBeaugrine</u>	<u>DeBeaugrine</u>
2) <u>Criminal Justice Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Fiscal Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill creates a class of persons who violate the conditions of their probation or community control, known as a "violent felony offender of special concern." "Violent felony offenders of special concern" are persons who commit violent crimes, and whose violation of probation or community control is not for a failure to pay money.

A "violent felony offender of special concern" must be held without bail until the violation is resolved.

The Criminal Punishment Code provides a mathematical formula that determines the minimum sentence that a criminal offender must serve. Under current law, a probation violator is assessed an additional 12 points for a felony violation, or 6 points for any other violation. This bill increases those points for violent felony offenders of special concern by 50%.

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would increase the inmate population by 1,336 inmates by the end of FY 2010-11. Please see section II, the fiscal and economic impact section of this analysis, for further information.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Personal responsibility -- This bill encourages responsible behavior by persons subject to probation or community control by increasing the penalties for violation of probation or community control.

B. EFFECT OF PROPOSED CHANGES:

Probation is a form of community supervision requiring specified contacts with parole and probation officers, standard terms and conditions in statute, and any specific terms and conditions required by the sentencing court.¹ Community Control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.²

The statutory terms and conditions required of persons on probation or community control, as provided by s. 948.03, F.S., are that the offender must:

- Report to the probation and parole supervisors as directed.
- Permit such supervisors to visit him or her at his or her home or elsewhere.
- Work faithfully at suitable employment insofar as may be possible.
- Remain within a specified place.
- Make reparation or restitution.
- Make payment of the debt due and owing to a county or municipal detention facility for medical care, treatment, hospitalization, or transportation received by the felony probationer while in that detention facility.
- Support his or her legal dependents to the best of his or her ability.
- Pay any monies owed to the crime victims compensation trust fund.
- Pay the application fee and costs of the public defender.
- Not associate with persons engaged in criminal activities.
- Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances.
- Not possess, carry, or own any firearm unless authorized by the court and consented to by the probation officer.
- Not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician.
- Not knowingly visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- Submit to the drawing of blood or other biological specimens, and reimburse the appropriate agency for the costs of drawing and transmitting the blood or other biological specimens to the Department of Law Enforcement.

Section 948.06, F.S., provides procedures regarding violation of the terms and conditions required of a person on probation or community control. Upon violation, the offender is arrested and brought before the sentencing court. At the first hearing on the violation, the offender is advised of the charge. If the

¹ Section 948.001(5), F.S.

² Section 948.001(2), F.S.

offender admits the charge, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If the offender denies having violated the terms of the probation or community control, the court may commit him or her or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation or community control violation. Unless dismissed, the court must conduct a hearing and determine whether the offender has violated. If the court finds that the offender has violated, the court may immediately revoke, modify, or continue the probation or community control or place the probationer into a community control program.

If probation or community control is revoked, the court must adjudicate the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed before placing the probationer on probation or the offender into community control.

The Criminal Punishment Code, ss. 921.002 through 921.0027, F.S., is applicable to all offenses committed on or after October 1, 1998. The code provides a mathematical formula that determines the minimum sentence that a court may impose upon an offender. The minimum sentence is calculated based upon the total number of points assessed against the offender. If the total points exceed 44, the court must subtract 28 points and multiply by 75%. The resulting number is the minimum number of months in state prison that the offender must serve. However, the court may find that one of the mitigating circumstances at s. 921.0026, F.S., warrants a downward departure. Where a downward departure is granted, the court may sentence the offender to less than the minimum sentence.

If an offender is resentenced after being found guilty of violating the terms of his or her probation or community control, the total points are re-calculated, adding 12 points for a violation resulting from committing a new felony offense, or 6 points for any violation other than a new felony offense. The effect of the additional points may compel the sentencing court to impose a new state prison sentence, unless the court finds grounds for a downward departure.

Effect of Bill

This bill creates the "Anti-Murder Act".

This bill creates s. 903.0351, F.S., which provides that a violent felony offender of special concern arrested for violation of probation or community control may not be granted bail prior to the resolution of the probation or community control violation hearing unless the violation is based solely on a failure to pay costs, fines, or restitution payments. A corresponding change is made to s. 948.06(4), F.S., regarding violent felony offenders of special concern who are captured in a county other than the sentencing county, denying bail to such offenders unless the violation is for a failure to pay costs, fines, or restitution payments.

This bill amends s. 948.06, F.S., regarding violation of probation, creating a new subsection (8) regarding violent felony offenders of special concern. The bill defines "violent felony offenders of special concern" as a person who is:

- On probation or community control related to the commission of a qualifying offense committed on or after July 1, 2006,
- On probation or community control for any offense committed on or after July 1, 2006, and who then commits a qualifying offense, or
- On probation or community control for any offense committed on or after July 1, 2006, and is found to have violated that probation or community control by committing a qualifying offense.

- On probation or community control and has previously been found by a court to be a habitual violent felony offender pursuant to s. 775.084(1)(b) and has committed a qualifying offense on or after July 1, 2006.
- On probation or community control and has previously been found by a court to be a three-time violent felony offender pursuant to s. 775.084(1)(c) and has committed a qualifying offense on or after July 1, 2006.
- Probation or community control and has previously been found by a court to be a sexual predator pursuant to s. 775.21 and has committed a qualifying offense on or after July 1, 2006.

This bill provides that commission of any listed offense on or after July 1, 2006 is a "qualifying offense." The listed offenses are:

- Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), F.S., or luring or enticing a child under s. 787.025, F.S..
- Murder or attempted murder under s. 782.04, F.S., attempted felony murder under s. 782.051, F.S., or manslaughter under s. 782.07, F.S.
- Aggravated battery or attempted aggravated battery under s. 784.045, F.S.
- Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4), F.S.
- Lewd or lascivious battery or attempted lewd or lascivious batter under s. 800.04, F.S. or lewd or lascivious molestation under s. 800.04(5)(b).
- Robbery or attempted robbery under s. 812.13, F.S., carjacking under s. 812.133, F.S., or home invasion robbery under s. 812.135, F.S.
- Lewd or lascivious offense offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025, F.S.
- Sexual performance of a child or attempted sexual performance of a child under s. 827.071, F.S.
- Computer pornography under s. 847.0135(2) or (3), F.S., transmission of child pornography under s. 847.0137, F.S., or selling or buying of minors under s. 847.0145, F.S.
- Poisoning food or water under s. 859.01, F.S.
- Abuse of a dead human body under s. 872.06, F.S.
- Any burglary offense or attempted burglary offense that is either a first or second degree felony under s. 810.02(2) or (3), F.S.
- Arson or attempted arson under s. 806.01(1), F.S.
- Aggravated assault under s. 784.021, F.S.
- Aggravated stalking under s. 784.048(3), (4), (5), or (7), F.S.
- Aircraft piracy under s. 860.16, F.S.

- Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4), F.S.
- Treason under s. 876.32, F.S.
- An offense in another jurisdiction that would meet the definitions of these offenses if committed in Florida.

This bill provides that, as to any person who is a violent felony offender of special concern, who violates any condition of probation other than a failure to pay costs, fines, or restitution:

- No bail is allowed.
- The court may not dismiss the violation unless the court conducts a recorded hearing at which the state and the offender are represented.

If the court finds that a violent felony offender of special concern has violated any nonmonetary terms of probation or community control, the court must decide whether to revoke the probation or community control. If the court determines by a preponderance of the evidence that a violent felony offender of special concern poses a danger to the community, the court shall revoke probation or community control and shall sentence the offender up to the statutory maximum under the Criminal Sentencing Code, s. 921.0024, F.S. The court is allowed to consider a number of factors in determining the danger to the community posed by the offender's release. The court must enter a written order in support of its finding in determining whether the offender poses a danger to the community.

This bill amends s. 921.0024, F.S., to modify the formula for determining the Total Sentence Points under the Criminal Punishment Code. A violent felony offender of special concern violator is assessed 9 points for a violation that does not involve a new felony conviction (as opposed to the 6 points assessed under current law), and is assessed 18 points for a violation that involves a new felony conviction (as opposed to the 12 points assessed under current law). These additional points will have the effect of lengthening the minimum sentence required by the Criminal Punishment Code.

C. SECTION DIRECTORY:

Section 1 names the act.

Section 2 creates s. 903.0351, F.S., denying bail for violent felony offenders of special concern.

Section 3 amends s. 948.06, F.S., defining violent felony offender of special concern and requiring a violation of probation hearing.

Section 4 amends s. 921 .0024, F.S., to increase points for community sanction violations.

Section 5, 6 and 7 republish sections of law that may be affected by the changes made in this bill.

Section 8 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 21, 2006 the Criminal Justice Estimating Conference determined that the bill would result in 32 additional inmates for FY 2006-07, increasing to 251 additional inmates by the end of FY 2007-08. The 32 additional inmates would result in additional costs of \$305,184 for operations. Construction costs are estimated by the conference at \$40,273 per bed which would result in construction costs of \$10.1 million which would cover the additional inmates expected in FY 2006-07 plus the additional inmates expected to be incarcerated during FY 2007-08.

The current bed construction phase-in schedule recommended by the Governor and under consideration by the House would be sufficient to accommodate the additional inmates expected to result from passage of this bill through the three year planning cycle that ends June 30, 2009.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill requires a violent felony offender of special concern to be detained without bail pending the final hearing on the violation. As such, the violator will be held in a county jail at county expense. The impact could be significant, but it should be noted that offenders who meet the definition of a violent felony offender of special concern are more serious offenders who may not be as likely to be granted bail under existing law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill could have a significant fiscal impact on counties but would appear to be exempt from the provisions of Article VII, Section 18 (a) of the state constitution because it amends a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to violent felony offenders; providing a short title; creating s. 903.0351, F.S.; prohibiting bail or other pretrial release for specified violent felony offenders of special concern without a hearing; amending s. 948.06, F.S.; providing definitions; providing that certain alleged violations of probation or community control by violent felony offenders of special concern require hearings and require the alleged offenders to remain in custody pending hearing; providing requirements for such hearings; amending s. 921.0024, F.S.; revising Criminal Punishment Code worksheet computations to provide additional community sanction violation points for certain community sanction violations committed by violent felony offenders of special concern; reenacting ss. 948.012(2)(b), 948.10(9), and 958.14, F.S., relating to split sentence of probation or community control and imprisonment, community control programs, and violation of probation or community control, respectively, to incorporate the amendment to s. 948.06, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Anti-Murder Act."

Section 2. Section 903.0351, Florida Statutes, is created to read:

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903.0351 Violent felony offenders of special concern; pretrial release hearing required.--A violent felony offender of special concern, as defined in s. 948.06, who has been arrested for an alleged violation of probation or community control shall not be granted bail or any other form of pretrial release prior to the resolution of the probation or community control violation hearing, unless the violation charge or arrest is based solely on failure to pay costs, fines, or restitution payments.

Section 3. Subsection (4) of section 948.06, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.--

(4) Notwithstanding any other provision of this section, a probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of such charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court which granted the probation or community control. If such violation is not admitted by the probationer or offender, the court may commit him or her or release him or her with or without bail to await further hearing. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s.

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56 | 827.071, or s. 847.0145, or is a registered sexual predator or a
 57 | registered sexual offender, or is under supervision for a
 58 | criminal offense for which he or she would meet the registration
 59 | criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the
 60 | effective date of those sections, the court must make a finding
 61 | that the probationer or offender is not a danger to the public
 62 | prior to release with or without bail. In determining the danger
 63 | posed by the offender's or probationer's release, the court may
 64 | consider the nature and circumstances of the violation and any
 65 | new offenses charged; the offender's or probationer's past and
 66 | present conduct, including convictions of crimes; any record of
 67 | arrests without conviction for crimes involving violence or
 68 | sexual crimes; any other evidence of allegations of unlawful
 69 | sexual conduct or the use of violence by the offender or
 70 | probationer; the offender's or probationer's family ties, length
 71 | of residence in the community, employment history, and mental
 72 | condition; his or her history and conduct during the probation
 73 | or community control supervision from which the violation arises
 74 | and any other previous supervisions, including disciplinary
 75 | records of previous incarcerations; the likelihood that the
 76 | offender or probationer will engage again in a criminal course
 77 | of conduct; the weight of the evidence against the offender or
 78 | probationer; and any other facts the court considers relevant.
 79 | The court, as soon as is practicable, shall give the probationer
 80 | or offender an opportunity to be fully heard on his or her
 81 | behalf in person or by counsel. After such hearing, the court
 82 | shall make findings of fact and forward the findings to the
 83 | court which granted the probation or community control and to

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the probationer or offender or his or her attorney. The findings of fact by the hearing court are binding on the court which granted the probation or community control. Upon the probationer or offender being brought before it, the court which granted the probation or community control may revoke, modify, or continue the probation or community control or may place the probationer into community control as provided in this section. However, if any violation other than a failure to pay costs, fines, or restitution payments is alleged to have been committed by a violent felony offender of special concern, as defined in subsection (8), the probationer or offender shall not be released and shall not be admitted to bail, but shall be brought before the court that granted the probation or community control.

(8)(a) In addition to complying with the provisions of subsections (1)-(7), a probationer or offender in community control who is a violent felony offender of special concern shall comply with this subsection. The provisions of this subsection shall control over any conflicting provisions in subsections (1)-(7).

(b) For purposes of this subsection and ss. 903.0351 and 921.0024, the term "violent felony offender of special concern" means a person who is on:

1. Probation or community control related to the commission of a qualifying offense committed on or after July 1, 2006;

2. Probation or community control for any offense committed on or after July 1, 2006, and has previously been

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convicted of or had adjudication withheld for a qualifying offense;

3. Probation or community control for any offense committed on or after July 1, 2006, and is found to have violated that probation or community control by committing a qualifying offense;

4. Probation or community control and has previously been found by a court to be a habitual violent felony offender as defined in s. 775.084(1)(b) and has committed a qualifying offense on or after July 1, 2006;

5. Probation or community control and has previously been found by a court to be a three-time violent felony offender as defined in s. 775.084(1)(c) and has committed a qualifying offense on or after July 1, 2006; or

6. Probation or community control and has previously been found by a court to be a sexual predator under s. 775.21 and has committed a qualifying offense on or after July 1, 2006.

(c) For purposes of this section, the term "qualifying offense" means any of the following:

1. Kidnapping or attempted kidnapping under s. 787.01, false imprisonment of a child under the age of 13 under s. 787.02(3), or luring or enticing a child under s. 787.025.

2. Murder or attempted murder under s. 782.04, attempted felony murder under s. 782.051, or manslaughter under s. 782.07.

3. Aggravated battery or attempted aggravated battery under s. 784.045.

4. Sexual battery or attempted sexual battery under s. 794.011(2), (3), or (4).

5. Lewd or lascivious battery or attempted lewd or lascivious battery under s. 800.04(4) or lewd or lascivious molestation under s. 800.04(5)(b).

6. Robbery or attempted robbery under s. 812.13, carjacking under s. 812.133, or home invasion robbery under s. 812.135.

7. Lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person under s. 825.1025.

8. Sexual performance by a child or attempted sexual performance by a child under s. 827.071.

9. Computer pornography under s. 847.0135(2) or (3), transmission of child pornography under s. 847.0137, or selling or buying of minors under s. 847.0145.

10. Poisoning food or water under s. 859.01.

11. Abuse of a dead human body under s. 872.06.

12. Any burglary offense or attempted burglary offense that is either a first or second degree felony under s. 810.02(2) or (3).

13. Arson or attempted arson under s. 806.01(1).

14. Aggravated assault under s. 784.021.

15. Aggravated stalking under s. 784.048(3), (4), (5), or (7).

16. Aircraft piracy under s. 860.16.

17. Unlawful throwing, placing, or discharging of a destructive device or bomb under s. 790.161(2), (3), or (4).

18. Treason under s. 876.32.

168 19. Any offense committed in another jurisdiction that
 169 would be an offense listed in this paragraph if that offense had
 170 been committed in this state.

171 (d) In the case of an alleged violation of probation or
 172 community control by a violent felony offender of special
 173 concern, other than a failure to pay costs, fines, or
 174 restitution, the offender shall remain in custody pending the
 175 resolution of the probation or community control violation. The
 176 court shall not dismiss the probation or community control
 177 violation warrant pending against a violent felony offender of
 178 special concern without holding a recorded violation of
 179 probation hearing at which both the state and the offender are
 180 represented.

181 (e) If the court, after conducting the hearing required by
 182 paragraph (d), determines that a violent felony offender of
 183 special concern has committed a violation of probation or
 184 community control other than a failure to pay costs, fines, or
 185 restitution, the court shall decide whether to revoke the
 186 probation or community control.

187 1. If the court determines, by a preponderance of the
 188 evidence, that a violent felony offender of special concern
 189 poses a danger to community, the court shall revoke probation or
 190 community control and shall sentence the offender under s.
 191 921.0024 up to the statutory maximum.

192 2. In determining the danger to the community posed by the
 193 offender's release, the court may consider:

194 a. The nature and circumstances of the violation and any
 195 new offenses charged.

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196 b. The offender's past and present conduct, including
197 convictions of crimes.

198 c. The offender's family ties, length of residence in the
199 community, employment history, and mental condition.

200 d. The offender's amenability to nonincarcerative
201 sanctions based on his or her history and conduct during the
202 probation or community control supervision from which the
203 violation hearing arises and any other previous supervisions,
204 including disciplinary records of previous incarcerations.

205 e. The likelihood that the offender will engage again in a
206 criminal course of conduct.

207 f. The weight of the evidence against the offender.

208 g. Any other facts the court considers relevant.

209 3. The court must enter a written order in support of its
210 finding.

211 Section 4. Paragraph (b) of subsection (1) of section
212 921.0024, Florida Statutes, is amended to read:

213 921.0024 Criminal Punishment Code; worksheet computations;
214 scoresheets.--

215 (1)

216 (b) WORKSHEET KEY:

217
218 Legal status points are assessed when any form of legal status
219 existed at the time the offender committed an offense before the
220 court for sentencing. Four (4) sentence points are assessed for
221 an offender's legal status.
222

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223 Community sanction violation points are assessed when a
 224 community sanction violation is before the court for sentencing.
 225 Six (6) sentence points are assessed for each community sanction
 226 violation, and each successive community sanction violation,
 227 unless any of the following apply: ~~however,~~

228 1. If the community sanction violation includes a new
 229 felony conviction before the sentencing court, twelve (12)
 230 community sanction violation points are assessed for the such
 231 violation, and for each successive community sanction violation
 232 involving a new felony conviction.

233 2. If the community sanction violation is committed by a
 234 violent felony offender of special concern as defined in s.
 235 948.06, but does not include a new felony conviction, nine (9)
 236 community sanction violation points are assessed for the
 237 violation and for each successive community sanction violation
 238 not involving a new felony conviction.

239 3. If the community sanction violation is committed by a
 240 violent felony offender of special concern as defined in s.
 241 948.06, and includes a new felony conviction before the
 242 sentencing court, eighteen (18) community sanction violation
 243 points are assessed for the violation and for each successive
 244 community sanction violation involving a new felony conviction.

245
 246 Multiple counts of community sanction violations before the
 247 sentencing court shall not be a basis for multiplying the
 248 assessment of community sanction violation points.
 249

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250 Prior serious felony points: If the offender has a primary
 251 offense or any additional offense ranked in level 8, level 9, or
 252 level 10, and one or more prior serious felonies, a single
 253 assessment of thirty (30) ~~30~~ points shall be added. For purposes
 254 of this section, a prior serious felony is an offense in the
 255 offender's prior record that is ranked in level 8, level 9, or
 256 level 10 under s. 921.0022 or s. 921.0023 and for which the
 257 offender is serving a sentence of confinement, supervision, or
 258 other sanction or for which the offender's date of release from
 259 confinement, supervision, or other sanction, whichever is later,
 260 is within 3 years before the date the primary offense or any
 261 additional offense was committed.

262
 263 Prior capital felony points: If the offender has one or more
 264 prior capital felonies in the offender's criminal record, points
 265 shall be added to the subtotal sentence points of the offender
 266 equal to twice the number of points the offender receives for
 267 the primary offense and any additional offense. A prior capital
 268 felony in the offender's criminal record is a previous capital
 269 felony offense for which the offender has entered a plea of nolo
 270 contendere or guilty or has been found guilty; or a felony in
 271 another jurisdiction which is a capital felony in that
 272 jurisdiction, or would be a capital felony if the offense were
 273 committed in this state.

274
 275 Possession of a firearm, semiautomatic firearm, or machine gun:
 276 If the offender is convicted of committing or attempting to
 277 commit any felony other than those enumerated in s. 775.087(2)

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278 while having in his or her possession: a firearm as defined in
 279 s. 790.001(6), an additional eighteen (18) ~~18~~ sentence points
 280 are assessed; or if the offender is convicted of committing or
 281 attempting to commit any felony other than those enumerated in
 282 s. 775.087(3) while having in his or her possession a
 283 semiautomatic firearm as defined in s. 775.087(3) or a machine
 284 gun as defined in s. 790.001(9), an additional twenty-five (25)
 285 ~~25~~ sentence points are assessed.

286

287 Sentencing multipliers:

288

289 Drug trafficking: If the primary offense is drug trafficking
 290 under s. 893.135, the subtotal sentence points are multiplied,
 291 at the discretion of the court, for a level 7 or level 8
 292 offense, by 1.5. The state attorney may move the sentencing
 293 court to reduce or suspend the sentence of a person convicted of
 294 a level 7 or level 8 offense, if the offender provides
 295 substantial assistance as described in s. 893.135(4).

296

297 Law enforcement protection: If the primary offense is a
 298 violation of the Law Enforcement Protection Act under s.
 299 775.0823(2), the subtotal sentence points are multiplied by 2.5.
 300 If the primary offense is a violation of s. 775.0823(3), (4),
 301 (5), (6), (7), or (8), the subtotal sentence points are
 302 multiplied by 2.0. If the primary offense is a violation of s.
 303 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 304 Protection Act under s. 775.0823(9) or (10), the subtotal
 305 sentence points are multiplied by 1.5.

306
307 Grand theft of a motor vehicle: If the primary offense is grand
308 theft of the third degree involving a motor vehicle and in the
309 offender's prior record, there are three or more grand thefts of
310 the third degree involving a motor vehicle, the subtotal
311 sentence points are multiplied by 1.5.

312
313 Offense related to a criminal street gang: If the offender is
314 convicted of the primary offense and committed that offense for
315 the purpose of benefiting, promoting, or furthering the
316 interests of a criminal street gang as prohibited under s.
317 874.04, the subtotal sentence points are multiplied by 1.5.

318
319 Domestic violence in the presence of a child: If the offender is
320 convicted of the primary offense and the primary offense is a
321 crime of domestic violence, as defined in s. 741.28, which was
322 committed in the presence of a child under 16 years of age who
323 is a family or household member as defined in s. 741.28(3) with
324 the victim or perpetrator, the subtotal sentence points are
325 multiplied by 1.5.

326 Section 5. For the purpose of incorporating the amendment
327 made by this act to section 948.06, Florida Statutes, in a
328 reference thereto, paragraph (b) of subsection (2) of section
329 948.012, Florida Statutes, is reenacted to read:

330 948.012 Split sentence of probation or community control
331 and imprisonment.--

332 (2) The court may also impose a split sentence whereby the
333 defendant is sentenced to a term of probation which may be

334 followed by a period of incarceration or, with respect to a
335 felony, into community control, as follows:

336 (b) If the offender does not meet the terms and conditions
337 of probation or community control, the court may revoke, modify,
338 or continue the probation or community control as provided in s.
339 948.06. If the probation or community control is revoked, the
340 court may impose any sentence that it could have imposed at the
341 time the offender was placed on probation or community control.
342 The court may not provide credit for time served for any portion
343 of a probation or community control term toward a subsequent
344 term of probation or community control. However, the court may
345 not impose a subsequent term of probation or community control
346 which, when combined with any amount of time served on preceding
347 terms of probation or community control for offenses pending
348 before the court for sentencing, would exceed the maximum
349 penalty allowable as provided in s. 775.082. Such term of
350 incarceration shall be served under applicable law or county
351 ordinance governing service of sentences in state or county
352 jurisdiction. This paragraph does not prohibit any other
353 sanction provided by law.

354 Section 6. For the purpose of incorporating the amendment
355 made by this act to section 948.06, Florida Statutes, in a
356 reference thereto, subsection (9) of section 948.10, Florida
357 Statutes, is reenacted to read:

358 948.10 Community control programs.--

359 (9) Procedures governing violations of community control
360 shall be the same as those described in s. 948.06 with respect
361 to probation.

362 Section 7. For the purpose of incorporating the amendment
363 made by this act to section 948.06, Florida Statutes, in a
364 reference thereto, section 958.14, Florida Statutes, is
365 reenacted to read:

366 958.14 Violation of probation or community control
367 program.--A violation or alleged violation of probation or the
368 terms of a community control program shall subject the youthful
369 offender to the provisions of s. 948.06. However, no youthful
370 offender shall be committed to the custody of the department for
371 a substantive violation for a period longer than the maximum
372 sentence for the offense for which he or she was found guilty,
373 with credit for time served while incarcerated, or for a
374 technical or nonsubstantive violation for a period longer than 6
375 years or for a period longer than the maximum sentence for the
376 offense for which he or she was found guilty, whichever is less,
377 with credit for time served while incarcerated.

378 Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283
SPONSOR(S): Kreegel
TIED BILLS:

Correctional Probation Officers

IDEN./SIM. BILLS: SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

Currently, if a correctional probation officer elects to carry a firearm while on duty, he or she is responsible for the cost of the firearm.

This bill requires that the Department of Corrections provide probation officers who elect to carry a firearm a standardized semi-automatic firearm and standardized ammunition for such firearm. This bill gives the department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the bill's provisions.

The Department of Corrections states in its fiscal analysis that it will cost \$1,825,389 to implement the provisions of this bill. The department would be responsible for absorbing this cost within its current operating budget.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm. This bill also gives the Department of Corrections the authority to adopt rules.

Maintain Public Security - This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm.

B. EFFECT OF PROPOSED CHANGES:

The Department of Corrections (department) employs over 2,700 correctional probation officers (CPOs) whose primary responsibilities are the supervised custody, surveillance, and control of assigned offenders.¹ Currently, CPOs who have received authorization² from the department may elect to carry department-approved firearms, ammunition, and reloading devices while on duty.³ Although the department currently provides standardized ammunition to its CPOs, the department's rules require that CPOs purchase their own firearm.⁴

This bill requires that the department provide CPOs who elect to carry a firearm a standardized semi-automatic firearm and standardized ammunition for such firearm. If the CPO decides to not carry a firearm, decides to change the type of firearm he/she carries, or is no longer employed by the department, this bill provides that the CPO must return the firearm and any unused ammunition to the department. This bill gives the department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its provisions.

C. SECTION DIRECTORY:

Section 1. Creates s. 943.17001, F.S.; requiring the Department of Corrections to provide a standardized semi-automatic firearm and standardized ammunition to probation officers who choose to carry a firearm; requiring probation officers to return firearms and ammunition to the Department of Corrections if the officer no longer elects to carry a firearm, changes the type of firearm he/she chooses

¹ Section 943.10(3), F.S., defines "correctional probation officer" as a "full time state employees whose primary responsibilities are the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community." See also Department of Corrections Procedure 302.313.

² CPOs requesting authorization to carry a firearm while on duty must submit a written request to the Department containing documentation that they have complied with the required training and qualification requirements of the Criminal Justice Standards and Training Commission and the Department. The Department must then review the request, review documentation of the officer's training and qualifications, and complete a Florida Crime Information Center/National Crime Information Center check on the officer and the firearm the officer intends to use. If approved, the Department issues the CPO a weapon card, which establishes that the CPO is authorized to carry a specific firearm while on duty. See Rule 33-302.104, F.A.C.

³ Department of Corrections' Procedure 302.313 authorizes CPOs to carry one of the following firearms:

- On or after July 13, 2005,
 - o Smith and Wesson five or six shot revolver of .38 or .357 caliber, with a barrel length of two-four inches
 - o one of the following semi-automatic pistols with a barrel length not to exceed five inches and a magazine with fifteen round law enforcement capacity:
 - Smith and Wesson 9 millimeter,
 - Beretta 9 millimeter, 92 series , or
 - Glock 9 millimeter.
- Prior to July 13, 2005, if an officer purchased an approved firearm not specified above, the officer will be allowed to qualify or maintain qualification with that firearm and will be allowed to continue with annual qualification with that specific firearm.

⁴ Rule 33-302.104(11), F.A.C.

to carry; or is no longer employed by the Department of Corrections; granting the Department of Corrections the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections states in its fiscal analysis that it will cost \$1,825,389 to implement the provisions of this bill. The department would be responsible for absorbing this cost within its current operating budget. This includes the cost of providing a firearm⁵ and ammunition to an estimated 1,801 CPOs. The amount also covers the cost of providing firearms training and the necessary gear associated with carrying a firearm (handcuffs, bullet-proof vest, holster, chemical agent, gun storage locker, etc.) for each CPO.

The department will also be responsible for absorbing the cost of additional firearms, ammunition and supplies for any of the remaining 900 CPOs if they later elect to carry a firearm.

⁵ The cost of the weapon is based on the purchase of a 9MM Smith & Wesson semi-automatic via state contract.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions. The bill specifically provides rule-making authority to the department to designate a standardized semi-automatic firearm and standardized ammunition. The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 283

2006

1 A bill to be entitled

2 An act relating to correctional probation officers;
3 creating s. 943.17001, F.S.; requiring the Department of
4 Corrections to provide a standardized firearm and
5 ammunition to correctional probation officers; providing
6 rulemaking authority of the department; providing an
7 effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 943.17001, Florida Statutes, is created
12 to read:

13 943.17001 Correctional probation officers; provision of
14 standardized firearm and ammunition.--Upon completion of
15 training, certification, and approval as a correctional
16 probation officer, the Department of Corrections shall provide
17 to any correctional probation officer who chooses to carry a
18 firearm a standardized semiautomatic firearm as designated by
19 department rule, and, for the duration of the correctional
20 probation officer's employment, standardized ammunition as
21 designated by department rule for the semiautomatic firearm
22 issued to the correctional probation officer. If a correctional
23 probation officer elects to no longer carry a firearm, changes
24 the type of firearm he or she chooses to carry, or is no longer
25 employed by the department, he or she must return the firearm
26 and any unused ammunition issued by the department. The
27 department has the authority to adopt rules pursuant to ss.

HB 283

2006

28 | 120.536(1) and 120.54 to implement the provisions of this
29 | section.

30 | Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 283

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice
Appropriations
Representative(s) Adams offered the following:

Amendment (with title amendments)

Between lines 29 and 30 insert:

Section 2. The sum of \$1,825,389 in nonrecurring funds is
appropriated from the General Revenue Fund to the Department of
Corrections for the 2006-2007 fiscal year for expenses for the
purpose of providing a standardized firearm and ammunition to
correctional probation officers.

===== T I T L E A M E N D M E N T =====

Remove line(s) 7 and insert:

appropriation; providing an effective date.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0283

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice
Appropriations
Representative(s) Kreegel offered the following:

Amendment

Remove line(s) 23 and 24 and insert:
probation officer elects to no longer carry a firearm or is no
longer

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